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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/720,573 | 11/24/2003 | Thomas McEvitt | 9249-55U1 | 5712 |
| 570 | 7590 | 02/02/2005 | EXAMINER | |
| AKIN GUMP STRAUSS HAUER & FELD L.L.P. ONE COMMERCE SQUARE 2005 MARKET STREET, SUITE 2200 PHILADELPHIA, PA 19103-7013 | | | GRAHAM, MARK S | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3711 | |

DATE MAILED: 02/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) |
|------------------------------|------------------------|---------------------|
| | 10/720,573 | MCKEVITT ET AL. |
| Examiner | Art Unit | |
| Mark S. Graham | 3711 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 08 November 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-7 and 9-14 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-7, 9-14 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a))

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Morse. In response to applicants' amendments and remarks, note Fig. 3 of Morse. Morse's "second internal cavity" which contains elements j and k is larger than the first cavity which holds the weights h. An end cap, k, or j and k combined, is inserted in the second internal cavity.

Claims 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Adorjan '749 (Adorjan). Elements 12 may be considered the plugs. In response to applicants' amendments and remarks, Adorjan's elements 12 have different lengths as can clearly be seen in the drawings. Regarding the total length of the plugs and weights, Adorjan's weights and plugs match the total length of the internal cavity as again can be clearly seen in Fig. 2.

Regarding claim 11, element 7' may be considered the head portion.

Claim 10 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Moore. It is noted that applicant has not contested this rejection.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adorjan.

Adorjan discloses the claimed method with the exception of specifically stating that a different number of weight rods are inserted after removing first weight rods. However, as Adorjan states in lines 10-14, an object of the invention is the regulation of the weight of the cue as well as its balance. Obviously to change the weight of the cue one must change the weight elements. It would have been obvious to one of ordinary skill in the art that to have added additional weight to the cue it would have made sense to use more weight elements thus increasing the weight of the cue. Therefore, the use of a different number of weight elements would have been obvious to the ordinarily skilled artisan.

Claims 2-7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laub in view of Adorjan '489. Laub discloses the claimed device/method with the exception of using a plurality of removable weights. However, as disclosed by Adorjan '489 it is known in the art to use a plurality of removable weights to adjust the cue to the particular user. It would have been obvious to one of ordinary skill in the art to have done the same with Laub's weight 110 for the same reason.

Regarding claim 3, note Adorjan's plug 7. It would have been obvious to have provided Laub's cue stick with such also to seal the end of the stick.

Concerning claims 4-7, absent a showing of unexpected results the exact dimensions and weights of the Laub/Adorjan '489 weights would obviously have been up to the ordinarily skilled artisan depending on the degree of weight and balance one wished to provide for the stick.

In response to applicant's arguments over the Laub/Adorjan combination, Adorjan '489 has not been cited to teach weights which touch the walls of the cavities. Laub clearly teaches this feature. As stated in the previous action, Adorjan '489 has only been cited to teach the use of multiple weights to weight a cue stick and the use of a plug to seal of the end of a cue stick. Such would have been clearly pertinent to the ordinarily skilled artisan seeking to weight a pool cue of the Laub design to suit a particular player.

Applicant's arguments filed 11/8/04 have been fully considered but they are not persuasive.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

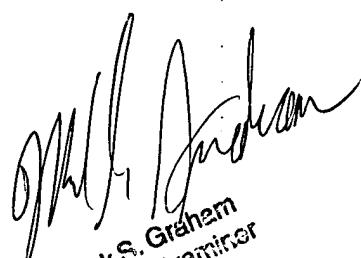
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 571-272-4410.

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Art Unit: 3711

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1/31/05



Mark S. Graham
Primary Examiner